

correspondence with the PBGC (as defined in Article X) on any Plan exchanged during the past three (3) years; (vii) all IRS (as defined in Article X) rulings, opinions or technical advice relating to any Plan and the current IRS determination letter issued with respect to each Qualified Plan; and (viii) all current Agreements with service providers or fiduciaries for providing services on behalf of any Plan. For each Other Arrangement, the Company will furnish to Acquiror within fifteen (15) days after the date of this Merger Agreement true and complete copies of each policy, Agreement or other Document setting forth or explaining the current terms of the Other Arrangement, all related trust agreements or other funding Documents (including, without limitation, insurance contracts, certificates of deposit, money market accounts, etc.), all significant employee communications, all correspondence or other submissions with any Governmental Entity exchanged during the past three (3) years, and all current Agreements with service providers or fiduciaries for providing services on behalf of any Other Arrangement.

(c) No Plan is a Multiemployer Plan (as defined in Article X).

(d) No Plan is an ESOP (as defined in Article X).

(e) The funding method used under each Minimum-Funding Plan (as defined in Article X) does not violate the funding requirements in Title I, Subtitle B, Part 3, of ERISA (as defined in Article X). For each Defined Benefit Plan (as defined in Article X), the Company has furnished to Acquiror a true and complete copy of the actuarial valuation reports issued by the actuaries of that Defined Benefit Plan for the three (3) most recent plan years, setting forth: (i) the actuarial present value (based upon the same actuarial assumptions as were used for that period for funding purposes) of all vested and nonvested accrued benefits under that Defined Benefit Plan; (ii) the actuarial present value (based upon the same actuarial assumptions, other than turnover assumptions, as were used for that period for funding purposes) of vested benefits under that Defined Benefit Plan; (iii) the net fair market value of that Defined Benefit Plan's Assets; and (iv) a detailed description of the funding method used under that Defined Benefit Plan.

(f) No "accumulated funding deficiency" as defined in Section 302(a)(2) of ERISA or Section 412 of the Code, whether or not waived, and no "unfunded current liability" as determined under Section 412(l) of the Code exists with respect to any Minimum-Funding Plan. No security is required under Section 401(a)(29) of the Code as to any Minimum-Funding Plan. Section 3.16(f) of the Company Disclosure Schedule, to be furnished by the Company to Acquiror within fifteen (15) days after the date of this Merger Agreement, will set forth all unpaid obligations and liabilities of the Company and the Subsidiaries to provide contributions currently due with respect to any Minimum-Funding Plan.

(g) Section 3.16(g) of the Disclosure Schedule, to be furnished by the Company to Acquiror within fifteen (15) days after the date of this Merger

Agreement, will set forth the contributions that (i) the Company or any Subsidiary has promised or is otherwise obligated to make under each Individual Account Plan that is a Statutory-Waiver Plan (as defined in Article X) and (ii) are due and unpaid as of the date of this Merger Agreement.

(h) The Company and the Subsidiaries have made all contributions and other payments required by and due under the terms of each Plan and Other Arrangement and have taken no action during the past three (3) years (other than actions required by Law) relating to any Plan or Other Arrangement that will increase Acquiror's, the Surviving Corporation's, the Company's or any Subsidiary's obligation under any Plan or Other Arrangement.

(i) Section 3.16(i) of the Company Disclosure Schedule, to be furnished by the Company to Acquiror within fifteen (15) days after the date of this Merger Agreement, will set forth a list of all Qualified Plans (as defined in Article X). All Qualified Plans and any related trust Agreements or annuity Agreements (or any other funding Document) comply and have complied with ERISA, the Code (including, without limitation, the requirements for Tax qualification described in Section 401 thereof), and all other Laws, except where the failure so to comply would not have a Company Material Adverse Effect. The trusts established under such Plans are exempt from federal income taxes under Section 501(a) of the Code. The Company and the Subsidiaries have received determination letters issued by the IRS with respect to each Qualified Plan, and the Company will furnish to Acquiror within fifteen (15) days after the date of this Merger Agreement true and complete copies of the most recent determination letter for each Qualified Plan. All statements made by or on behalf of the Company or any Subsidiary to the IRS in connection with applications for such determination letters with respect to each Qualified Plan were true and complete when made and continue to be true and complete. To the knowledge of the Company and the Subsidiaries, nothing has occurred since the date of the most recent applicable determination letter that would adversely affect the tax-qualified status of any Qualified Plan.

(j) To their knowledge, the Company and the Subsidiaries have complied in all material respects with all applicable provisions of the Code, ERISA, the National Labor Relations Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Fair Labor Standards Act, the Securities Act, the Exchange Act (as defined in Article X), and all other Laws pertaining to the Plans, Other Arrangements and other employee or employment related benefits, and all premiums and assessments relating to all Plans or Other Arrangements. Neither the Company nor any Subsidiary has any liability for any delinquent contributions within the meaning of Section 515 of ERISA (including, without limitation, related attorneys' fees, costs, liquidated damages and interest) or for any arrearages of wages. Neither the Company nor any Subsidiary has any pending unfair labor practice charges, contract grievances under any collective bargaining

agreement, other administrative charges, claims, grievances or lawsuits before any court, arbiter or Governmental Entity arising under any Law governing any Plan, and to the knowledge of the Company and the Subsidiaries there exist no facts that could give rise to such a claim.

(k) To their knowledge, none of the Company or any Subsidiary or any of the Plans has engaged in violation of Section 406(a) or 406(b) of ERISA for which no exemption exists under Section 408 of ERISA or any "prohibited transactions" (as such term is defined in Section 4975(c)(1) of the Code), for which no exemption exists under Section 4975(c)(2) or 4975(d) of the Code. Neither the Company nor any Subsidiary has requested a prohibited transaction exemption with respect to any Plan.

(l) The Company and the Subsidiaries have paid all premiums (and interest charges and penalties for late payment, if applicable) due to the PBGC for each Defined Benefit Plan. The Company has reflected (or shall reflect) in each of the Financial Statements the current value of such premium obligation that is accrued and unsatisfied as of the date of each such Financial Statement. Section 3.16(l) of the Company Disclosure Schedule, to be furnished by the Company to Acquiror within fifteen (15) days after the date of this Merger Agreement, will set forth the amount of all such unpaid premium obligations (including, without limitation, proportionate partial accruals for the current year). Other than being required to make and making premium payments when due, no liability to the PBGC has been incurred by the Company or by any Common Control Entity (as defined in Article X) on account of Title IV of ERISA. During the past three years, no filing has been made by, or required of, the Company or any Common Control Entity with the PBGC, the PBGC has not started any proceeding to terminate any Defined Benefit Plan that was or is maintained or wholly or partially funded by the Company or any Common Control Entity, and to the knowledge of the Company and the Subsidiaries no facts exist that would permit the PBGC to begin such a proceeding. Neither the Company nor any Common Control Entity has, or will have as a result of the transactions contemplated hereby, (i) withdrawn as a substantial employer so as to become subject to Section 4063 of ERISA; or (ii) ceased making contributions to any Pension Plan that is subject to Section 4064(a) of ERISA to which the Company or any Common Control Entity made contributions during the past five years.

(m) Section 3.16(m) of the Company Disclosure Schedule, to be furnished by the Company to Acquiror within fifteen (15) days after the date of this Merger Agreement, will identify any terminated Plan that covered any current or former employees of the Company or any Subsidiary, and any other Plan that has been terminated, during the past three (3) years. The Company has furnished to Acquiror true and complete copies of all filings with any Governmental Entity, employee communications, board minutes and all other Documents relating to each such Plan termination.

(n) Except as set forth in Section 3.16(n) of the Company Disclosure Schedule to be furnished by the Company to Acquiror within fifteen (15) days after the date of this Merger Agreement, no Plan or Other Arrangement, individually or collectively, provides for any payment by the Company or any Subsidiary to any employee or independent contractor that is not deductible under Section 162(a)(1) or 404 of the Code or that is an "excess parachute payment" pursuant to Section 280G of the Code.

(o) No Plan has, within the past three (3) years, experienced a "reportable event" (as such term is defined in Section 4043(b) of ERISA) that is not subject to an administrative or statutory waiver from the reporting requirement.

(p) No Plan is a "qualified foreign plan" (as such term is defined in Section 404A(e) of the Code), and no Plan is subject to the Laws of any jurisdiction other than the United States of America or one of its political subdivisions.

(q) The Company and the Subsidiaries have timely filed and the Company has furnished to Acquiror true and complete copies of each Form 5330 (Return of Excise Taxes Related to Employee Benefit Plans) that the Company or any Subsidiary filed on any Plan during the past three (3) years. To their knowledge, the Company and the Subsidiaries have no liability for Taxes required to be reported on Form 5330.

(r) Section 3.16(r) of the Company Disclosure Schedule, to be furnished by the Company to Acquiror within fifteen (15) days after the date of this Merger Agreement, will list all funded Welfare Plans (as defined in Article X) that provide benefits to current or former employees of the Company or any Subsidiary, or to their beneficiaries. The funding under each Welfare Plan does not exceed and has not exceeded the limitations under Sections 419A(b) and 419A(c) of the Code. To their knowledge, the Company and the Subsidiaries are not subject to taxation on the income of any Welfare Plan's welfare benefit fund (as such term is defined in Section 419(e) of the Code) under Section 419A(g) of the Code.

(s) Section 3.16(s) of the Company Disclosure Schedule, to be furnished by the Company to Acquiror within fifteen (15) days after the date of this Merger Agreement, will (i) identify all post-retirement medical, life insurance or other benefits promised, provided or otherwise due now or in the future to current, former or retired employees of the Company or any Subsidiary, (ii) identify the method of funding (including, without limitation, any individual accounting) for all such benefits, (iii) disclose the funded status of the Plans providing or promising such benefits and (iv) set forth the method of accounting for such benefits to any key employees (as defined in Section 416(i) of the Code) of the Company or any Subsidiary.

(t) All Welfare Plans and the related trusts that are subject to Section 4980B(f) of the Code and Sections 601 through 607 of ERISA comply in all

material respects with and have been administered in compliance with the health care continuation-coverage requirements for tax-favored status under Section 4980B(f) of the Code (formerly Section 162(k) of the Code), Sections 601 through 607 of ERISA, and all proposed or final regulations under Section 162 of the Code explaining those requirements.

(u) The Company and the Subsidiaries have (i) filed or caused to be filed all returns and reports on the Plans that they are required to file and (ii) paid or made adequate provision for all fees, interest, penalties, assessments or deficiencies that have become due pursuant to those returns or reports or pursuant to any assessment or adjustment that has been made relating to those returns or reports. All other fees, interest, penalties and assessments that are due and payable by or for the Company or any Subsidiary with respect to any Plan have been timely reported, fully paid and discharged. There are no unpaid fees, penalties, interest or assessments due from the Company or any Subsidiary or from any other Person that are or could become an Encumbrance on any Asset of the Company or any Subsidiary or could otherwise have a Company Material Adverse Effect. The Company and the Subsidiaries have collected or withheld all amounts that are required to be collected or withheld by them to discharge their obligations with respect to each Plan, and all of those amounts have been paid to the appropriate Governmental Entity or set aside in appropriate accounts for future payment when due.

SECTION 3.17. Taxes and Tax Matters.

(a) The Company and the Subsidiaries have (or, in the case of Company Tax Returns (as defined in Article X) becoming due after the date hereof and before the Effective Time, will have prior to the Effective Time) duly filed all Company Tax Returns required to be filed by the Company and the Subsidiaries since January 1, 1989 at or before the Effective Time with respect to all applicable material Taxes. No material penalties or other charges are or will become due with respect to any such Company Tax Returns as the result of the late filing thereof. All such Company Tax Returns are (or, in the case of returns becoming due after the date hereof and before the Effective Time, will be) true and complete in all material respects. The Company and the Subsidiaries: (i) have paid all Taxes due or claimed to be due by any Taxing authority in connection with any such Company Tax Returns (without regard to whether or not such Taxes are shown as due on such Company Tax Returns); or (ii) have established (or, in the case of amounts becoming due after the date hereof, prior to the Effective Time will have paid or established) in the Financial Statements adequate reserves (in conformity with GAAP consistently applied) for the payment of such Taxes. The amounts set up as reserves for Taxes in the Financial Statements are sufficient for the payment of all unpaid Taxes, whether or not such Taxes are disputed or are yet due and payable, for or with respect to the applicable period, and for which the Company or any Subsidiary may be liable in its own right (including, without limitation, by reason

of being a member of the same affiliated group) or as a transferee of the Assets of, or successor to, any Person.

(b) Neither the Company nor any Subsidiary, either in its own right (including, without limitation, by reason of being a member of the same affiliated group) or as a transferee, has or at the Effective Time will have any liability for Taxes payable for or with respect to any periods prior to and including the Effective Time in excess of the amounts actually paid prior to the Effective Time or reserved for in the Financial Statements, except for any Taxes due in connection with the Merger.

(c) Except as set forth in Section 3.17(c) of the Company Disclosure Schedule, all federal, Illinois, Indiana and Missouri Company Tax Returns have been examined by the relevant Taxing authorities, or closed without audit by applicable Law, and all deficiencies proposed as a result of such examinations have been paid or settled, for all taxable years prior to and including the taxable year ended December 31, 1992. Except as set forth in Section 3.17(c) of the Company Disclosure Schedule, there is no action, suit, proceeding, audit, investigation or claim pending or, to the knowledge of the Company or any Subsidiary, threatened in respect of any Taxes for which the Company or any Subsidiary is or may become liable, nor has any deficiency or claim for any such Taxes been proposed, asserted or, to the knowledge of the Company or any Subsidiary, threatened. Except as set forth in Section 3.17(c) of the Company Disclosure Schedule, neither the Company nor any Subsidiary has consented to any waivers or extensions of any statute of limitations with respect to any taxable year of the Company or any Subsidiary. Except as set forth in Section 3.17(c) of the Company Disclosure Schedule, there is no Agreement, waiver or consent providing for an extension of time with respect to the assessment or collection of any Taxes against the Company or any Subsidiary, and no power of attorney granted by the Company or any Subsidiary with respect to any Tax matters is currently in force.

(d) The Company has furnished to Acquiror true and complete copies of all Company Tax Returns and all written communications with any Governmental Entity relating to any such Company Tax Returns or to any deficiency or claim proposed or asserted, irrespective of the outcome of such matter, but only to the extent such items relate to Tax years (i) which are subject to an audit, investigation, examination or other proceeding, or (ii) with respect to which the statute of limitations has not expired.

(e) Section 3.17(e) of the Company Disclosure Schedule sets forth (i) all federal Tax elections that currently are in effect with respect to the Company or any Subsidiary, and (ii) all elections for purposes of foreign, state or local Taxes and all consents or Agreements for purposes of federal, foreign, state or local Taxes in each case that reasonably could be expected to affect or be binding upon the Surviving Corporation or any Subsidiary or their respective Assets or operations

after the Effective Time. Section 3.17(e) of the Company Disclosure Schedule sets forth all changes in accounting methods for Tax purposes made, agreed to, requested or required with respect to the Company or any of the Subsidiaries since January 1, 1994.

(f) Except as set forth in Section 3.17(f) of the Company Disclosure Schedule, neither the Company nor any Subsidiary (i) is or has, since January 1, 1989, been a partner in a partnership or an owner of an interest in an entity treated as a partnership for federal income Tax purposes; (ii) since January 1, 1989, has executed or filed with the IRS any consent to have the provisions of Section 341(f) of the Code apply to it; (iii) is subject to Section 999 of the Code; (iv) is a passive foreign investment company as defined in Section 1296(a) of the Code; or (v) is a party to an Agreement relating to the sharing, allocation or payment of, or indemnity for, Taxes (other than an Agreement the only parties to which are the Company and the Subsidiaries).

(g) The Company and the Subsidiaries have no knowledge of, and believe that there does not exist, any plan or intention on the part of the Company Shareholders (a "Shareholder Plan") to engage in a sale, exchange, transfer, distribution (including, without limitation, a distribution by a partnership to its partners or by a corporation to its shareholders), pledge, disposition or any other transaction which results in a reduction in the risk of ownership or a direct or indirect disposition (a "Sale") of a number of shares of Acquiror Common Stock to be issued to such Company Shareholders in the Merger, which would reduce the Company Shareholders' ownership of Acquiror Common Stock to a number of shares having an aggregate fair market value, as of the Effective Time, of less than forty-five percent (45%) of the aggregate fair market value, immediately prior to the Merger, of all outstanding shares of the Company Capital Stock. For purposes of this paragraph, (i) shares of Company Capital Stock with respect to which a Company Shareholder receives consideration in the Merger other than Acquiror Common Stock (including, without limitation, cash received pursuant to the exercise of dissenters' rights or in lieu of fractional shares of Acquiror Common Stock) and/or (ii) shares of Company Capital Stock with respect to which a Sale occurs prior to and in contemplation of the Merger, shall be considered shares of outstanding Company Capital Stock exchanged for Acquiror Common Stock in the Merger and then disposed of pursuant to a Shareholder Plan.

SECTION 3.18. Customers.

To the knowledge of the Company and the Subsidiaries, the relationships of the Company and the Subsidiaries with their customers are good commercial working relationships. Except as set forth in Section 3.18 of the Company Disclosure Schedule to be furnished by the Company to Acquiror within fifteen (15) days after the date of this Merger Agreement, during the twelve (12) months prior to the date of this Merger Agreement, no customer of the Company or any

Subsidiary which accounted for in excess of \$50,000 of the revenues of the Company and the Subsidiaries during such twelve (12) months has canceled or otherwise terminated its relationship with the Company or any Subsidiary.

SECTION 3.19. Certain Business Practices.

Neither the Company, the Subsidiaries nor any of their officers or directors or, to the knowledge of the Company or any Subsidiary, any of their employees or agents (or shareholders, distributors, representatives or other persons acting on the express, implied or apparent authority of the Company or of any Subsidiary) have paid, given or received or have offered or promised to pay, give or receive, any bribe or other unlawful, questionable payment of money or other thing of value, any unlawful extraordinary discount, or any other unlawful inducement, to or from any Person or Governmental Entity in the United States or elsewhere in connection with or in furtherance of the business of the Company or any Subsidiary (including, without limitation, any offer, payment or promise to pay money or other thing of value (a) to any foreign official or political party (or official thereof) for the purposes of influencing any act, decision or omission in order to assist the Company or any Subsidiary in obtaining business for or with, or directing business to, any Person, or (b) to any Person, while knowing that all or a portion of such money or other thing of value will be offered, given or promised to any such official or party for such purposes). The business of the Company and the Subsidiaries is not in any manner dependent upon the making or receipt of such payments, discounts or other inducements.

SECTION 3.20. Insurance.

Section 3.20 of the Company Disclosure Schedule, to be furnished by the Company to Acquiror within fifteen (15) days after the date of this Merger Agreement, will list and briefly describe all policies of title, Asset, fire, hazard, casualty, liability, life, worker's compensation and other forms of insurance of any kind owned or held by the Company or any Subsidiary. All such policies: (a) are with insurance companies reasonably believed by the Company to be financially sound and reputable; (b) are in full force and effect; (c) are sufficient for compliance by the Company and by each Subsidiary with all requirements of Law and of all Agreements to which the Company or any Subsidiary is a party; (d) are valid and outstanding policies enforceable against the insurer; (e) insure against risks of the kind customarily insured against and in amounts customarily carried by companies similarly situated and by companies engaged in similar businesses and owning similar Assets, and provide adequate insurance coverage for the businesses and Assets of the Company and the Subsidiaries; and (f) provide that they will remain in full force and effect through the respective dates set forth in Section 3.20 of the Company Disclosure Schedule.

SECTION 3.21. Potential Conflicts of Interest.

Except as set forth in Section 3.21 of the Company Disclosure Schedule to be furnished by the Company to Acquiror within fifteen (15) days after the date of this Merger Agreement, neither any present or, to the knowledge of the Company or any Subsidiary, former director, officer, employee with a salary in excess of \$100,000 or shareholder of the Company or any Subsidiary, nor any Affiliate of such director, officer, employee or shareholder:

(a) owns, directly or indirectly, any interest in (except for holdings in securities that are listed on a national securities exchange, quoted on a national automated quotation system or regularly traded in the over-the-counter market, where such holdings are not in excess of two percent (2%) of the outstanding class of such securities and are held solely for investment purposes), or is a shareholder, partner, other holder of equity interests, director, officer, employee, consultant or agent of any Person that is a competitor, lessor, lessee or customer of, or supplier of goods or services to, the Company or any Subsidiary, except where the value to such individual of any such arrangement with the Company or any Subsidiary has been less than \$60,000 in the last twelve (12) months;

(b) owns, directly or indirectly, in whole or in part, any Assets with a fair market value of \$60,000 or more which the Company or any Subsidiary currently uses in its business;

(c) has any cause of action or other suit, action or claim whatsoever against, or owes any amount to, the Company or any Subsidiary, except for claims arising in the Ordinary Course of Business from any such Person's service to the Company or any Subsidiary as a director, officer or employee;

(d) has sold or leased to, or purchased or leased from, the Company or any Subsidiary any Assets for consideration in excess of \$60,000 in the aggregate since January 1, 1994;

(e) is a party to any Agreement pursuant to which the Company or any Subsidiary provides office space to any such Person, or provides services of any nature to any such Person, other than in the Ordinary Course of Business in connection with the employment of such Person by the Company or any Subsidiary; or

(f) has, since January 1, 1994, engaged in any other material transaction with the Company or any Subsidiary involving in excess of \$60,000, other than (i) in the Ordinary Course of Business in connection with the employment of such Person by the Company or any Subsidiary, and (ii) dividends, distributions and stock issuances to all common and preferred shareholders (as applicable) on a pro rata basis.

SECTION 3.22. Receivables.

The accounts receivable of the Company and the Subsidiaries shown on the Audited Balance Sheets and the Unaudited Balance Sheets, or thereafter acquired by any of them, arose in the Ordinary Course of Business and represent amounts owed by an account debtor for goods sold or services rendered by the Company and the Subsidiaries, and the allowance for doubtful accounts shown on such Audited Balance Sheets and Unaudited Balance Sheets was established in accordance with past practice.

SECTION 3.23. Real Property.

(a) Section 3.23(a) of the Company Disclosure Schedule, to be furnished by the Company to Acquiror within fifteen (15) days after the date of this Merger Agreement, will list all the Real Property (as defined in Article X), specifying the owner of each parcel thereof, and all such Real Property is suitable and adequate for the uses for which it is currently being used.

(b) Except as set forth in Section 3.23(b) of the Company Disclosure Schedule, the Company and the Subsidiaries are the sole owners of good, valid, fee simple, marketable and insurable (at standard rates) title to the Real Property respectively owned by them, including, without limitation, all buildings, structures, fixtures and improvements thereon, in each case free and clear of all Encumbrances.

(c) All buildings, structures, fixtures and other improvements on the Real Property are fit for the uses to which they are currently devoted. All such buildings, structures, fixtures and improvements on the Real Property conform in all material respects to all Laws, except for any such non-conformance that would not have a Company Material Adverse Effect.

(d) None of the Real Property is subject to any Agreement or other restriction of any nature whatsoever (recorded or unrecorded) preventing or limiting the Company's or any Subsidiary's right to use it in the manner in which it is currently being used, and except as set forth in Section 3.23(d) of the Company Disclosure Schedule to be furnished by the Company to Acquiror within fifteen (15) days after the date of this Merger Agreement, none of the material Real Property is subject to any Agreement preventing or limiting the Company's or any Subsidiary's right to convey it.

(e) No portion of the Real Property or any building, structure, fixture or improvement thereon is the subject of any condemnation, eminent domain or inverse condemnation proceeding currently instituted or pending, and neither the Company nor any Subsidiary has any knowledge that any of the foregoing are, or will be, the subject of any such proceeding.

(f) The Real Property has access to adequate electric, gas, water, sewer and telephone lines, all of which are adequate for the uses to which the Real Property is currently devoted.

SECTION 3.24. Books and Records.

The books of account, stock records, minute books and other corporate and financial records of the Company are complete and correct in all material respects and have been maintained in accordance with good business practices, and the matters contained therein are appropriately and accurately reflected in all material respects in the Financial Statements.

SECTION 3.25. Assets.

Except as set forth in Section 3.25 of the Company Disclosure Schedule, the Company and the Subsidiaries have good, valid and marketable title to all material Assets respectively owned by them, including, without limitation, all material Assets reflected in the Audited Balance Sheets and in the Unaudited Balance Sheets and all material Assets purchased by the Company or by any Subsidiary since December 31, 1996 (except for Assets reflected in such Audited Balance Sheets and Unaudited Balance Sheets or acquired since December 31, 1996 which have been sold or otherwise disposed of in the Ordinary Course of Business), free and clear of all Encumbrances. All personal property of the Company and the Subsidiaries is in a condition adequate for the uses for which it is currently being used.

SECTION 3.26. No Infringement or Contest.

Section 3.26 of the Company Disclosure Schedule, to be furnished by the Company to Acquiror within fifteen (15) days after the date of this Merger Agreement, will set forth (i) all trademarks, service marks, trade names, trade styles and all registrations or applications therefor, (ii) all patents, inventions and all registrations or applications therefor, (iii) all proprietary software used by the Company or any Subsidiary, and (iv) all Agreements to which the Company or any Subsidiary is a party, either as licensee or licensor, relating to any of the foregoing, in each case owned, licensed or used by the Company or any Subsidiary (including specification of whether each such item listed is owned, licensed or used by the Company or any Subsidiary). With respect to the material Intellectual Property (as defined in Article X) that is owned by the Company or any Subsidiary, the Company and the Subsidiaries have the right to bring action for infringement of such Intellectual Property. With respect to the Intellectual Property that is licensed to the Company or any Subsidiary, such Intellectual Property can be used by the Company and the Subsidiaries in their respective businesses as currently conducted by them in accordance with the terms and conditions of such licenses. As

used in the businesses of the Company and the Subsidiaries as currently conducted, none of the Company's or any Subsidiary's Intellectual Property infringes or misappropriates or otherwise violates any Intellectual Property of any other Person, nor is the Company or any Subsidiary otherwise in the conduct of their respective businesses infringing upon, or alleged to be infringing upon, any Intellectual Property of any other Person. The Company and the Subsidiaries own or possess adequate rights to use all Intellectual Property necessary to the conduct of the respective businesses of the Company and the Subsidiaries as currently conducted.

SECTION 3.27. Opinion of Financial Advisor.

The Company has received the written opinion of William Blair & Company ("William Blair") on or prior to the date of this Merger Agreement, to the effect that, as of the date of such opinion, the consideration to be received pursuant to the transactions contemplated under this Merger Agreement is fair to the Company Shareholders from a financial point of view, and the Company will promptly, after the date of this Merger Agreement, deliver a copy of such opinion to Acquiror.

SECTION 3.28. Board Recommendation.

At a meeting duly called and held in compliance with Illinois Law, the Board of Directors of the Company has adopted by unanimous vote a resolution approving and adopting this Merger Agreement and the transactions contemplated hereby and recommending approval and adoption of this Merger Agreement and the transactions contemplated hereby by the Company Shareholders.

SECTION 3.29. Vote Required.

The affirmative vote of the holders of two-thirds of the outstanding Company Common Shares, the holders of two-thirds of the outstanding Company Series A Preferred Shares and the holders of two-thirds of the outstanding Company Series B Preferred Shares are the only votes of the holders of any class or series of capital stock of the Company necessary to approve the transactions contemplated by this Merger Agreement.

SECTION 3.30. Banks; Attorneys-in-fact.

Section 3.30 of the Company Disclosure Schedule sets forth a complete list showing the name of each bank or other financial institution in which the Company or any Subsidiary has accounts (including a description of the names of all Persons authorized to draw thereon or to have access thereto). Such list also shows the name of each Person holding a power of attorney from the Company or any Subsidiary and a brief description thereof.

SECTION 3.31. Investment Agreements.

In accordance with Section 6.05, Investment Agreements in the form attached hereto as Exhibit A (the "Investment Agreements") will be executed and delivered to Acquiror by the Company Shareholders and each such Investment Agreement constitutes a legal, valid and binding obligation of the respective Company Shareholder who is a party thereto, enforceable against such Company Shareholder in accordance with its terms.

SECTION 3.32. Brokers.

No broker, finder or investment banker (other than William Blair) is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Merger Agreement based upon arrangements made by or on behalf of the Company or any Subsidiary. Prior to the date of this Merger Agreement, the Company has furnished to Acquiror a complete and correct copy of all Agreements between the Company and William Blair pursuant to which such firm will be entitled to any payment relating to the transactions contemplated by this Merger Agreement.

SECTION 3.33. Environmental Matters.

(a) The Company has complied and is in compliance with, and the Real Property and all improvements thereon are in compliance with, all Environmental Laws (as defined in Article X), except where the failure so to comply would not have a Company Material Adverse Effect.

(b) Except as set forth in Section 3.33(b) of the Company Disclosure Schedule to be furnished by the Company to Acquiror within fifteen (15) days after the date of this Merger Agreement, there are no pending or threatened actions, suits, claims, legal proceedings or other proceedings based on, and neither the Company or any Subsidiary has received since January 1, 1992 any formal or informal notice of any complaint, order, directive, citation, notice of responsibility, notice of potential responsibility, or information request from any Governmental Entity or any other Person or knows any fact(s) which might form the basis for any such actions or notices arising out of or attributable to: (i) the current or past presence at any part of the Real Property of Hazardous Materials (as defined in Article X) or any substances that pose a hazard to human health or an impediment to working conditions; (ii) the current or past release or threatened release into the environment from the Real Property (including, without limitation, into any storm drain, sewer, septic system or publicly owned treatment works) of any Hazardous Materials or any substances that pose a hazard to human health or an impediment to working conditions; (iii) the off-site disposal of Hazardous Materials originating on or from the Real Property or the businesses or Assets of the Company or any Subsidiary; (iv) any facility operations, procedures or designs of the Company or

any Subsidiary which do not conform to requirements of the Environmental Laws; or (v) any violation of Environmental Laws at any part of the Real Property or otherwise arising from the Company's or any Subsidiary's activities (or the activities of the Company's or any Subsidiary's predecessors in title) involving Hazardous Materials.

(c) The Company and the Subsidiaries have been duly issued, and currently have and will maintain through the Effective Time, all Licenses required under any Environmental Law. A true and complete list of such Licenses, all of which are valid and in full force and effect, will be set out in Section 3.33(c) of the Company Disclosure Schedule, to be furnished by the Company to Acquiror within fifteen (15) days after the date of this Merger Agreement. Except in accordance with such permits, licenses, certificates and approvals or as described in Section 3.33(c) of the Company Disclosure Schedule, there has been no Hazardous Discharge (as defined below) or discharge of any other material regulated by such Licenses.

(d) Except as set forth in Section 3.33(d) of the Company Disclosure Schedule to be furnished by the Company to Acquiror within fifteen (15) days after the date of this Merger Agreement, the Real Property contains no underground storage tanks, or underground piping associated with such tanks, used currently or in the past for the storage, throughput or other management of Hazardous Materials.

SECTION 3.34. Disclosure.

No representation or warranty by the Company, and no Document furnished or to be furnished to Acquiror pursuant to this Merger Agreement or otherwise in connection herewith or with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary in order to make the statements contained therein, in light of the circumstances under which made, not misleading. As of the date of this Agreement, the Company believes that, based upon the assumptions contained therein, it has a reasonable likelihood of attaining the results of its 5-year financial forecast, as furnished to Acquiror.

SECTION 3.35. Company Shareholders.

Except as set forth in Section 3.35 of the Company Disclosure Schedule, all holders of Company Capital Stock are residents of the State of Illinois.

SECTION 3.36. Directors and Officers.

Section 3.36 of the Company Disclosure Schedule lists all current directors and officers of the Company and the Subsidiaries, showing each such person's

name, positions, and annual remuneration, bonuses and fringe benefits paid by the Company or any Subsidiary for the current fiscal year and the most recently completed fiscal year.

SECTION 3.37. Copies of Documents.

True and complete copies of all Documents listed in the Company Disclosure Schedule have been or will be, within fifteen (15) days after the date of this Merger Agreement, furnished to Acquiror.

SECTION 3.38. Operation of the Company's Business.

(a) Section 3.38(a) of the Company Disclosure Schedule sets forth all complaints filed with the FCC or the ICC (as defined in Article X) regarding "slamming" (as such term is understood in the telephone industry) by the Company, any Subsidiary or any of their respective employees, resellers, agents or representatives; and

(b) Section 3.38(b) of the Company Disclosure Schedule, to be furnished by the Company to Acquiror within fifteen (15) days after the date of this Merger Agreement, will set forth all filings by the Company or any Subsidiary with the FCC, the ICC or the FAA since January 1, 1996.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF ACQUIROR AND ACQUIROR SUB

Except as specifically set forth in the Disclosure Schedule delivered by Acquiror and Acquiror Sub to the Company prior to the execution and delivery of this Merger Agreement (the "Acquiror Disclosure Schedule") (with a disclosure with respect to a Section of this Merger Agreement to require a specific reference in the Acquiror Disclosure Schedule to the Section of this Merger Agreement to which each such disclosure applies, and no disclosure to be deemed to apply with respect to any Section to which it does not expressly refer), Acquiror and Acquiror Sub hereby jointly and severally represent and warrant (which representation and warranty shall be deemed to include the disclosure with respect thereto so specified in the Acquiror Disclosure Schedule) to the Company as follows, in each case as of the date of this Merger Agreement, unless otherwise specifically set forth herein or in the Acquiror Disclosure Schedule:

SECTION 4.01. Organization and Qualification; Subsidiaries.

Each of Acquiror, Acquiror Sub and Acquiror's Significant Subsidiaries (as defined in Article X) is a corporation duly organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization, and has the full and unrestricted corporate power and authority to own, operate and lease its Assets, and to carry on its business as currently conducted. Each of Acquiror and its Significant Subsidiaries is duly qualified to conduct business as a foreign corporation and is in good standing in the states, countries and territories in which the nature of the business conducted by it or the character of the Assets owned, leased or otherwise held by it makes such qualification necessary, except where the absence of such qualification as a foreign corporation would not have an Acquiror Material Adverse Effect (as defined in Article X).

SECTION 4.02. Articles of Incorporation and Bylaws.

Acquiror has furnished to the Company a true and complete copy of the Amended and Restated Certificate of Incorporation of Acquiror and the articles of incorporation of Acquiror Sub, as currently in effect, certified as of a recent date by the Secretary of State (or comparable Governmental Entity) of their respective jurisdictions of incorporation, and a true and complete copy of the Amended and Restated Bylaws of Acquiror and the bylaws of Acquiror Sub, as currently in effect, certified by their respective corporate secretaries. Such certified copies are attached as exhibits to, and constitute an integral part of, the Acquiror Disclosure Schedule.

SECTION 4.03. Authority; Binding Obligation.

Each of Acquiror and Acquiror Sub has the full and unrestricted corporate power and authority to execute and deliver this Merger Agreement and to carry out the transactions contemplated hereby. The execution and delivery by Acquiror and Acquiror Sub of this Merger Agreement and all other Documents contemplated hereby, and the consummation by Acquiror and Acquiror Sub of the transactions contemplated hereby and thereby, have been duly authorized by all necessary corporate action and no other corporate proceedings on the part of Acquiror or Acquiror Sub are necessary to authorize this Merger Agreement and the other Documents contemplated hereby, or to consummate the transactions contemplated hereby and thereby. This Merger Agreement has been duly executed and delivered by Acquiror and Acquiror Sub and constitutes a legal, valid and binding obligation of Acquiror and Acquiror Sub in accordance with its terms, except as such enforceability may be subject to the effect of any applicable bankruptcy, insolvency fraudulent conveyance, reorganization, moratorium or similar Laws affecting creditors' rights generally and subject to the effect of general equitable principles (whether considered in a proceeding in equity or at law).

SECTION 4.04. No Conflict; Required Filings and Consents.

(a) The execution, delivery and performance by Acquiror and Acquiror Sub of this Merger Agreement and all other Documents contemplated hereby, the fulfillment of and compliance with the respective terms and provisions hereof and thereof, and the consummation by Acquiror and Acquiror Sub of the transactions contemplated hereby and thereby, do not and will not: (i) conflict with, or violate any provision of, the Amended and Restated Certificate of Incorporation or the Amended and Restated Bylaws of Acquiror, or the certificate or articles of incorporation or bylaws of Acquiror Sub or any of Acquiror's Significant Subsidiaries; or (ii) subject to obtaining the consents, approvals, authorizations and permits of, and making filings with or notifications to, the applicable Governmental Entity pursuant to the applicable requirements, if any, of the Securities Act, Blue Sky Laws, the HSR Act, the Communications Act, the Federal Aviation Act, applicable state utilities Laws and applicable municipal franchise Laws, and the filing and recordation of the Articles of Merger as required by Illinois Law and Delaware Law, conflict with or violate any Law applicable to Acquiror, Acquiror Sub or any of Acquiror's Significant Subsidiaries, or any of their respective Assets; (iii) conflict with, result in any breach of, constitute a default (or an event that with notice or lapse of time or both would become a default) under any Agreement to which Acquiror, Acquiror Sub or any of Acquiror's Significant Subsidiaries is a party or by which Acquiror, Acquiror Sub or any of Acquiror's Significant Subsidiaries, or any of their respective Assets, may be bound; or (iv) result in or require the creation or imposition of, or result in the acceleration of, any indebtedness or any Encumbrance of any nature upon, or with respect to, Acquiror, Acquiror Sub or any of Acquiror's Significant Subsidiaries or any of the Assets of Acquiror, Acquiror Sub or any of Acquiror's Significant Subsidiaries; except for any such conflict or violation described in clause (ii), any such conflict, breach or default described in clause (iii), or any such creation, imposition or acceleration described in clause (iv) that would not have an Acquiror Material Adverse Effect.

(b) Except as set forth in Section 4.04(b) of the Acquiror Disclosure Schedule, the execution, delivery and performance by Acquiror and Acquiror Sub of this Merger Agreement and all other Documents contemplated hereby, the fulfillment of and compliance with the respective terms and provisions hereof and thereof, and the consummation by Acquiror and Acquiror Sub of the transactions contemplated hereby and thereby, do not and will not: (i) require any consent, approval, authorization or permit of, or filing with or notification to, any Person not party to this Merger Agreement, except (A) pursuant to the applicable requirements, if any, of the Securities Act, Blue Sky Laws, the HSR Act, the Communications Act, the Federal Aviation Act, applicable state utilities Laws and applicable municipal franchise Laws, and (B) the filing and recordation of the Articles of Merger as required by Illinois Law and Delaware Law; or (ii) result in or give rise to any penalty, forfeiture, Agreement termination, right of termination,

amendment or cancellation, or restriction on business operations of Acquiror, the Surviving Corporation or any of Acquiror's Significant Subsidiaries.

SECTION 4.05. No Prior Activities of Acquiror Sub.

Acquiror Sub was formed solely for the purpose of engaging in the transactions contemplated by this Merger Agreement and has engaged in no other business activities and has conducted its operations only as contemplated hereby.

SECTION 4.06. Brokers.

No broker or finder or investment banker (other than Salomon Brothers Inc) is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Merger Agreement based upon arrangements made by or on behalf of Acquiror.

SECTION 4.07. SEC Documents.

Acquiror has filed all required reports, schedules, forms, statements and other Documents with the SEC (as defined in Article X) since January 1, 1996 (including the Post-Signing SEC Documents (as defined in Section 6.13), the "Acquiror SEC Documents"). As of their respective dates, the Acquiror SEC Documents complied or, in the case of the Post-Signing SEC Documents, will comply as to form in all material respects with the applicable requirements of the Securities Act or the Exchange Act, as the case may be, and none of the Acquiror SEC Documents contained or, in the case of the Post-Signing SEC Documents, will contain, any untrue statement of a material fact or omitted or, in the case of the Post-Signing SEC Documents, will omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The financial statements of Acquiror included in the Acquiror SEC Documents comply or, in the case of the Post-Signing SEC Documents, will comply as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, have been or, in the case of the Post-Signing SEC Documents, will have been prepared in accordance with GAAP (except, in the case of unaudited statements, as permitted by Form 10-Q of the SEC) applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto) and fairly present the consolidated financial position of Acquiror and its consolidated subsidiaries as of the dates thereof and the consolidated results of operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments).

SECTION 4.08. Acquiror Common Stock.

The Acquiror Common Stock, when issued and delivered to the Company Shareholders pursuant to the Merger, will be duly authorized, validly issued, fully paid and nonassessable, and will have been approved for listing by Nasdaq.

SECTION 4.09. Capitalization.

The authorized capital stock of Acquiror consists of (a) 250,000,000 shares of Acquiror Common Shares, of which, as of June 13, 1997: (i) 52,652,741 shares were issued and outstanding, all of which were duly authorized, validly issued, fully paid and nonassessable; (ii) no shares were held in the treasury of Acquiror; and (iii) 8,191,797 shares were reserved for issuance pursuant to outstanding options to purchase Acquiror Common Stock granted to employees and certain other Persons; (b) 22,000,000 shares of Class B common stock, par value \$.01 per share ("Acquiror Class B Common Stock"), of which, as of June 13, 1997: (i) no shares were issued and outstanding; (ii) no shares were held in the treasury of Acquiror; and (iii) 1,300,688 shares were reserved for issuance pursuant to outstanding options to purchase Acquiror Class B Common Stock granted to a significant stockholder of Acquiror; and (c) 2,000,000 shares of serial preferred stock, par value \$.01 per share, of which: (i) no shares are issued and outstanding; and (ii) no shares are held in the treasury of Acquiror. Except for the options set forth in clauses (a)(iii) and (b)(iii) above, as of June 13, 1997, there were no outstanding securities convertible into or exchangeable for capital stock or any other securities of Acquiror, or any capital stock or other securities of any of Acquiror's Significant Subsidiaries and no outstanding options, rights (preemptive or otherwise), or warrants to purchase or to subscribe for any shares of such capital stock or other securities of Acquiror or any of Acquiror's Significant Subsidiaries. Except as set forth in Section 4.09(a) of the Acquiror Disclosure Schedule and except for Agreements relating to the options specified in clauses (a)(iii) and (b)(iii) above, there are no outstanding Agreements to which Acquiror or any of its Significant Subsidiaries is a party affecting or relating to the voting, issuance, purchase, redemption, registration, repurchase or transfer of capital stock or any other securities of Acquiror, or any capital stock or other securities of any of Acquiror's Significant Subsidiaries, except as contemplated hereunder. Except as set forth in Section 4.09(b) of the Acquiror Disclosure Schedule and except pursuant to the exercise of options to purchase Acquiror Common Stock granted to employees and certain other Persons, since March 31, 1997, no shares of capital stock of Acquiror have been issued by Acquiror. Each of the outstanding shares of Acquiror Common Stock and Acquiror Class B Common Stock, and of capital stock of, or other equity interests in, Acquiror's Significant Subsidiaries was issued in compliance with all applicable federal and state Laws concerning the issuance of securities, and, except as set forth in Section 4.09(c) of the Acquiror Disclosure Schedule, such shares or other equity interests owned by Acquiror or any of its Significant Subsidiaries are owned free and clear of all Encumbrances. There are no obligations, contingent or

otherwise, of Acquiror or any of its Significant Subsidiaries to provide funds to, make any investment (in the form of a loan, capital contribution or otherwise) in, or provide any guarantee with respect to, any of Acquiror's Significant Subsidiaries or any other Person. Except as set forth in Section 4.09(d) of the Acquiror Disclosure Schedule, there are no Agreements pursuant to which any Person is or may be entitled to receive any of the revenues or earnings, or any payment based thereon or calculated in accordance therewith, of Acquiror or any of its Significant Subsidiaries.

SECTION 4.10. Absence of Registration Rights.

Except as provided in the Stockholders' Agreement (as defined in Article X), no holders of capital stock of Acquiror have rights to the registration of such capital stock with the SEC.

SECTION 4.11. Absence of Dividends.

Since March 31, 1997, Acquiror has not declared or made payment of, or set aside for payment, any dividends on, or any other distribution in respect of, the outstanding shares of its capital stock.

ARTICLE V

COVENANTS RELATING TO CONDUCT OF BUSINESS

SECTION 5.01. Conduct of Business of the Company.

The Company hereby covenants and agrees that, from the date of this Merger Agreement until the Effective Time, the Company, unless otherwise expressly contemplated by this Merger Agreement or consented to in writing by Acquiror, will, and will cause the Subsidiaries to, carry on their respective businesses only in the Ordinary Course of Business, use their respective best efforts to preserve intact their business organizations and Assets, maintain their rights and franchises, retain the services of their officers and key employees and maintain their relationships with customers, suppliers, licensors, licensees and others having business dealings with them, and use their respective best efforts to keep in full force and effect liability insurance and bonds comparable in amount and scope of coverage to that currently maintained. Without limiting the generality of the foregoing, except as otherwise expressly contemplated by this Merger Agreement, from the date of this Merger Agreement until the Effective Time the Company shall not, and shall not permit any of the Subsidiaries to:

- (a) (i) increase in any manner the compensation or fringe benefits of, or pay any bonus to, any director, officer or employee, except for increases

or bonuses in the Ordinary Course of Business to employees who are not directors or officers; (ii) grant any severance or termination pay (other than pursuant to the normal severance policy of the Company or any Subsidiary in effect on the date of this Merger Agreement) to, or enter into any severance Agreement with, any director, officer or employee, or enter into any employment Agreement with any director, officer or employee; (iii) establish, adopt, enter into or amend any Plan or Other Arrangement, except as may be required to comply with applicable Law; (iv) pay any benefit not provided for under any Plan or Other Arrangement; (v) grant any awards under any bonus, incentive, performance or other compensation plan or arrangement or Plan or Other Arrangement (including the grant of stock options, stock appreciation rights, stock-based or stock-related awards, performance units or restricted stock, or the removal of existing restrictions in any Plan or Other Arrangement or Agreement or awards made thereunder), except for grants in the Ordinary Course of Business; or (vi) except as set forth in Schedule 5.01(a), take any action to fund or in any other way secure the payment of compensation or benefits under any Agreement, Plan or Other Arrangement;

(b) except for dividends and other distributions set out in Schedule 5.01(b), declare, set aside or pay any dividend on, or make any other distribution in respect of, outstanding shares of capital stock;

(c) (i) redeem, purchase or otherwise acquire any shares of capital stock of the Company or any Subsidiary or any securities or obligations convertible into or exchangeable for any shares of capital stock of the Company or any Subsidiary, or any options, warrants or conversion or other rights to acquire any shares of capital stock of the Company or any Subsidiary or any such securities or obligations, or any other securities thereof; (ii) effect any reorganization or recapitalization; or (iii) split, combine or reclassify any of its capital stock or issue or authorize or propose the issuance of any other securities in respect of, in lieu of or in substitution for, shares of its capital stock;

(d) issue, deliver, award, grant or sell, or authorize the issuance, delivery, award, grant or sale (including the grant of any limitations in voting rights or other Encumbrances) of, any shares of any class of its capital stock (including shares held in treasury), any securities convertible into or exercisable or exchangeable for any such shares, or any rights, warrants or options to acquire, any such shares, or amend or otherwise modify the terms of any such rights, warrants or options the effect of which shall be to make such terms more favorable to the holders thereof;

(e) acquire or agree to acquire, by merging or consolidating with, by purchasing an equity interest in or a portion of the Assets of, or by any other

manner, any business or any corporation, partnership, association or other business organization or division thereof, or otherwise acquire or agree to acquire any Assets of any other Person (other than the purchase of assets from suppliers or vendors in the Ordinary Course of Business);

(f) sell, lease, exchange, mortgage, pledge, transfer or otherwise subject to any Encumbrance or otherwise dispose of, or agree to sell, lease, exchange, mortgage, pledge, transfer or otherwise subject to any Encumbrance or otherwise dispose of, any of its Assets, except for (i) dispositions in the Ordinary Course of Business, (ii) distributions of the Assets set out in Schedule 5.01(b) and (iii) dispositions of the Assets set forth in Schedule 5.01(f);

(g) adopt any amendments to its articles or certificate of incorporation, bylaws or other comparable charter or organizational documents;

(h) make or rescind any express or deemed election relating to Taxes, settle or compromise any claim, action, suit, litigation, proceeding, arbitration, investigation, audit or controversy relating to Taxes, or change any of its methods of reporting income or deductions for federal income tax purposes from those employed in the preparation of the federal income tax returns for the taxable year ending December 31, 1995, except in either case as may be required by Law, the IRS or GAAP;

(i) make or agree to make any new capital expenditure or expenditures which are not included in the Company's 1997 capital budget, a copy of which was furnished to Acquiror (and, if the Effective Time has not occurred prior to January 1, 1998, the Company's capital budget for 1998, which budget shall have been approved by Acquiror (such approval not to be unreasonably withheld)), and which are, individually, in excess of \$50,000 or, in the aggregate, in excess of \$500,000;

(j) (i) incur any indebtedness for borrowed money or guarantee any such indebtedness of another Person, issue or sell any debt securities or warrants or other rights to acquire any debt securities of the Company or any Subsidiary, guarantee any debt securities of another Person, enter into any "keep well" or other Agreement to maintain any financial statement condition of another Person or enter into any Agreement having the economic effect of any of the foregoing, except for short-term borrowings incurred in the Ordinary Course of Business, or (ii) except as set out in Schedule 5.01(i), make any loans, advances or capital contributions to, or investments in, any other Person other than intra-group loans, advances, capital contributions or investments between or among the Company and any of its wholly owned Subsidiaries;

(k) pay, discharge, settle or satisfy any claims, liabilities or obligations (whether absolute or contingent, matured or unmatured, known or unknown), other than the payment, discharge or satisfaction, in the Ordinary Course of Business or in accordance with their terms, of liabilities reflected or reserved against in, or contemplated by, the most recent Financial Statement or incurred in the Ordinary Course of Business, or waive any material benefits of, or agree to modify in any material respect, any confidentiality, standstill or similar Agreements to which the Company or any Subsidiary is a party;

(l) except in the Ordinary Course of Business, waive, release or assign any rights or claims, or modify, amend or terminate any Agreement to which the Company or any Subsidiary is a party;

(m) make any change in any method of accounting or accounting practice or policy other than those required by GAAP;

(n) take any action or fail to take any action which could reasonably be expected to have a Company Material Adverse Effect prior to or after the Effective Time or an Acquiror Material Adverse Effect after the Effective Time, or that could reasonably be expected to adversely effect the ability of the Company or any Subsidiary prior to the Effective Time, or Acquiror or any of its subsidiaries after the Effective Time, to obtain consents of third parties or approvals of Governmental Entities required to consummate the transactions contemplated in this Merger Agreement; or

(o) authorize, or commit or agree to do any of the foregoing.

SECTION 5.02. Other Actions.

The Company and Acquiror shall not, and shall not permit any of their respective Affiliates to, take any action that would, or that could reasonably be expected to, result in (a) any of the representations and warranties of such party set forth in this Merger Agreement becoming untrue, or (b) any of the conditions to the Merger set forth in Article VII not being satisfied.

SECTION 5.03. Certain Tax Matters.

From the date hereof until the Effective Time, the Company and the Subsidiaries (a) will accurately prepare and timely file with the relevant Taxing authority all Company Tax Returns ("Post-Signing Returns") required to be filed, (b) will timely pay all Taxes due and payable with respect to such Post-Signing Returns, (c) will pay or otherwise make adequate provision for all Taxes payable by the Company and the Subsidiaries for which no Post-Signing Return is due prior to the Effective Time, and (d) will promptly notify Acquiror of any action, suit,

proceeding, claim or audit pending against or with respect to the Company or any Subsidiary in respect of any Taxes.

SECTION 5.04. Access and Information.

For so long as this Merger Agreement is in effect, the Company shall, and shall cause each Subsidiary to, (a) afford to Acquiror and its officers, employees, accountants, consultants, legal counsel and other representatives reasonable access during normal business hours to all of their respective properties, Agreements, books, records and personnel and (b) furnish promptly to Acquiror (i) a copy of each Document filed with, or received from any Governmental Entity and (ii) all other information concerning their respective businesses, operations, prospects, conditions (financial or otherwise), Assets, liabilities and personnel as Acquiror may reasonably request.

SECTION 5.05. No Solicitation.

(a) The Company and its directors, officers, employees, representatives and agents shall, and shall cause the Subsidiaries and their respective directors, officers, employees, representatives and agents to, immediately cease any discussions or negotiations with any Person that may be ongoing with respect to a Competing Transaction (as defined in this Section 5.05(a)). The Company shall not, and shall cause the Subsidiaries not to, initiate, solicit or encourage (including by way of furnishing information or assistance), or take any other action to facilitate, any inquiries or the making of any proposal that constitutes, or may reasonably be expected to lead to, any Competing Transaction, or enter into discussions or furnish any information or negotiate with any Person or otherwise cooperate in any way in furtherance of such inquiries or to obtain a Competing Transaction, or agree to or endorse any Competing Transaction, or authorize any of the directors, officers, employees, agents or representatives of the Company or any Subsidiary to take any such action, and the Company shall, and shall cause the Subsidiaries to, direct and instruct and use its or their best efforts to cause the directors, officers, employees, agents and representatives of the Company and the Subsidiaries (including, without limitation, any investment banker, financial advisor, attorney or accountant retained by the Company or any Subsidiary) not to take any such action, and the Company shall promptly notify Acquiror if any such inquiries or proposals are received by the Company or any Subsidiary, or any of its or their respective directors, officers, employees, agents, investment bankers, financial advisors, attorneys, accountants or other representatives, and the Company shall promptly inform Acquiror as to the material terms of such inquiry or proposal and, if in writing, promptly deliver or cause to be delivered to Acquiror a copy of such inquiry or proposal, and the Company shall keep Acquiror informed, on a current basis, of the nature of any such inquiries and the status and terms of any such proposals. For purposes of this

Merger Agreement, "Competing Transaction" shall mean any of the following involving the Company or the Subsidiaries (other than the transactions contemplated by this Merger Agreement): (i) any merger, consolidation, share exchange, business combination, or other similar transaction; (ii) any sale, lease, exchange, mortgage, pledge, transfer or other disposition of ten percent (10%) or more of the Assets of the Company and the Subsidiaries, taken as a whole, or issuance of ten percent (10%) or more of the outstanding voting securities of the Company or any Subsidiary in a single transaction or series of transactions; (iii) any tender offer or exchange offer for ten percent (10%) or more of the outstanding shares of capital stock of the Company or any Subsidiary or the filing of a registration statement under the Securities Act in connection therewith; (iv) any solicitation of proxies in opposition to approval by the Company Shareholders of the Merger; (v) any Person shall have acquired beneficial ownership or the right to acquire beneficial ownership of, or any "group" (as such term is defined under Section 13(d) of the Exchange Act) shall have been formed which beneficially owns or has the right to acquire beneficial ownership of, ten percent (10%) or more of the then outstanding shares of capital stock of the Company or any Subsidiary; or (vi) any Agreement to, or public announcement by the Company or any other Person of a proposal, plan or intention to, do any of the foregoing.

(b) Neither the Board of Directors of the Company nor any committee thereof shall (i) withdraw or modify, or propose to withdraw or modify, in a manner adverse to Acquiror or Acquiror Sub, the approval or recommendation by such Board of Directors or any such committee of this Merger Agreement or the Merger, (ii) approve or recommend, or propose to approve or recommend, any Competing Transaction or (iii) enter into any Agreement with respect to any Competing Transaction.

ARTICLE VI

ADDITIONAL AGREEMENTS

SECTION 6.01. Meeting of Shareholders.

The Company shall promptly after the date of this Merger Agreement take all action necessary in accordance with Illinois Law and its articles of incorporation and bylaws to convene a meeting of the Company Shareholders to consider the Merger (the "Company Shareholders' Meeting"), and the Company shall consult with Acquiror in connection therewith. The Company shall deliver to each Company Shareholder the Acquiror Information (as defined in Article X) prior to the Company Shareholders' Meeting. Prior to the distribution thereof to the Company Shareholders, the Company shall make available to Acquiror all Documents to be distributed to the Company Shareholders in connection with the solicitation of shareholder approval of the Merger, and shall only distribute